



July 7, 2021

Dear FOIA Officer:

Pursuant to the Freedom of Information Act, 5 U.S.C. § 552, as amended, Public Employees for Environmental Responsibility ("PEER"), requests certain information and communications from the U.S. Environmental Protection Agency (EPA) regarding the dissemination of a confidential whistleblower disclosure within the agency's Office of Chemical Safety and Pollution Prevention (OCSPP).

### **Background**

On Monday, June 28, 2021, PEER submitted a whistleblower complaint to the EPA Office of Inspector General and provided copies confidentially to the U.S. House of Representatives Committee on Oversight and Reform's Subcommittee on Environment and EPA Assistant Administrator for OCSPP Michal Ilana Freedhoff. That disclosure contained unredacted personally identifying and otherwise sensitive information about a number of EPA employees and programs. By the next afternoon, Tuesday, June 29, 2021, multiple employees within OCSPP had contacted PEER's clients about the complaint, including the managers named in the complaint and other persons potentially implicated. It is evident that this confidential disclosure was widely shared within OCSPP, thus paving the way for retaliation against PEER's clients, and may also have been shared outside the agency. This is extremely troubling, as discussed in subsequent public reporting about the disclosure.<sup>1</sup>

PEER is thus requesting documents related to the dissemination of this whistleblower disclosure.

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<sup>1</sup> See Sharon Lerner, *WHISTLEBLOWERS EXPOSE CORRUPTION IN EPA CHEMICAL SAFETY OFFICE*, THE INTERCEPT (July 2, 2021), <https://theintercept.com/2021/07/02/epa-chemical-safety-corruption-whistleblowers/>.

"While such complaints are usually kept confidential, by Tuesday many managers in the Office of Chemical Safety and Pollution Prevention had somehow obtained a copy of the whistleblowers' allegations. "The fact that EPA released our clients' names is inappropriate and troubling," said Bennett. "They've been put in an incredibly uncomfortable situation. This gives the managers the chance to circle the wagons trying to go after them."

For the whistleblowers, the release of their names is just the latest battle in a war they've been waging for years."

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## **Requests**

PEER requests the following records created between June 28, 2021, and July 2, 2021:

1. All emails sent or received by any EPA employee which included the attachment file "EPA Scientists Transmittal letter final 6\_28 Attachments.pdf"
2. Any emails, Teams messages, or other communications otherwise discussing the disclosure submitted by PEER's clients on June 28, 2021.

If the above requests are unclear, result in an abnormally large number of results, or otherwise impracticable please contact the requester to provide clarification or narrow the scope of the request accordingly.

Responsive records should exclude routine or automatically generated emails such as news alerts, roundups, or similar services.

## **Scope of Request**

### **1. Dates of Records**

This request is limited to records and information generated between June 28, 2021, and July 2, 2021.

### **2. Custodians**

Custodians of the relevant records include current employees assigned or detailed to OCSPP but may include persons in other EPA offices or programs if the initial search indicates that the relevant disclosure was disseminated to other EPA programs.

Because PEER cannot know with precision which individual custodians would maintain such records, it has specified the office and subject matter such that the agency has reason to know which places may contain responsive documents.

This request is not limited to documents exchanged between the listed persons and should include communications exchanged between any listed person and any other person that otherwise are responsive to this request.

### **3. Form of Records**

This request includes all final documents that have ever been within the agency's custody or control, whether they exist in agency "working," investigative, retired, electronic mail, or other files. All electronic records should be delivered in their original file format with original metadata and any attachments included. Physical records should be scanned or otherwise converted into electronic format.

Responsive records should include electronic as well as handwritten materials, if they have not been digitized. Please also provide all email attachments or linked materials if they are in the agency's possession or control.

PEER requests that a search be conducted of relevant folders in the agency's electronic file systems, including Microsoft Teams or other similar services, in addition to employee emails.

For electronic records, please provide all records in their native file formats (i.e. not converted to PDF) with all metadata included, and for records such as emails which have files embedded or attached, please provide all attachments in their native formats. For instant messages, plain text is acceptable consistent with guidance issued by the National Archives and Records Administration.

#### **4. Withholdings and Exemptions**

For any documents or portions of documents that you block release due to specific exemption(s) from the requirements of the Freedom of Information Act, please provide an index itemizing and describing the documents or portions of documents withheld. The index should, pursuant to the holding of Vaughn v. Rosen (484 F.2d 820 [D.C. Cir. 1973] cert. denied, 415 U.S. 977 [1974]), provide a detailed justification for claiming a particular exemption that explains why each such exemption applies to the document or portion of a document withheld.

#### **Fee Waiver Request**

PEER requests that all fees be waived because "disclosure of the information is in the public interest . . . and is not primarily in the commercial interest of the requestor" (5 U.S.C. § 552 (a)(4)(A)):

##### **1. The records concern the operations or activities of the Government.**

The FOIA request is, by its terms, limited to identifiable activities of the agency and its response to a whistleblower complaint regarding its chemical program.

##### **2. The disclosure of the requested records is likely to contribute to public understanding of these operations or activities.**

If the public sees these materials, it will help enhance their understanding of how the agency protects whistleblowers and details of their disclosures from exposure to persons in those employees' managerial chain with the power to engage in retaliatory acts against those whistleblowers. As public reporting has already described the internal dissemination of the whistleblowers' disclosure based on partial information, further official information from the agency will help clarify that record.

##### **3. The release of these requested records will contribute significantly to public understanding of the governmental activities.**

The nature of the information should enhance public understanding of the agency's whistleblower protection practices. As public reporting has already described the internal dissemination of the whistleblowers' disclosure based on partial information, further official information from the agency will help clarify that record.

PEER intends to provide the requested information to members of Congress and its relevant committees, including Rep. Ro Khanna, who has already commented on the importance of this disclosure. We also intend to disseminate it to the general public through –

- Release to the news media;
- Posting on the PEER web page which draws 5,000-7,000 unique visitors per month; and
- Publication in the PEER newsletter that has a circulation of approximately 20,000, including 1,500 journalists.

Through these methods, PEER generates an average of 1.5 mainstream news articles per day. Moreover, media coverage of PFAS underlines the broad public interest in this material.

#### **4. Disclosure would not serve a commercial interest of the requestor.**

Disclosure is in no way connected with any commercial interest of the requestors in that PEER is a nonprofit, nonpartisan public interest organization concerned with upholding the public trust through responsible management of our nation's resources and with supporting professional integrity within public land management, environmental protection, and pollution control agencies. To that end, PEER is designated as a tax-exempt organization under section 501 (c)(3) of the Internal Revenue code.

#### **Please Request any Necessary Clarification or Narrowed Scope**

If in the process of conducting a search for records responsive to this request it appears that a large quantity of irrelevant material is being included or further relevant material may not be captured by the specific terms of the request, or any other concerns related to the timeliness or completeness of the response arise, please contact the undersigned at [kbell@peer.org](mailto:kbell@peer.org). I will be on personal leave from July 13, 2021 through August 1, 2021, so if questions arise in that period, please also contact Kyla Bennett at [kbennett@peer.org](mailto:kbennett@peer.org).

We look forward to receiving the agency's final response within 20 working days.

Thank You,



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